

Colon v. LaValley
10-cv-2173 (NGG)
EXHIBIT D

The trial transcript

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL TERM - PART: 3 .

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

INDICTMENT NO.
2518/2003

5 DENNIS COLON,

6 Defendant.

7 -----X
8 320 JAY STREET
9 BROOKLYN, NEW YORK 11201
JUNE 1, 2006

10 B E F O R E:

11 HONORABLE JAMES P. SULLIVAN,
12 Justice and jury

13
14 A P P E A R A N C E S:

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16 District Attorney, Kings County
BY: ANITA CHANNAPATI, ESQ.
17 BY: LOUISE COHEN, ESQ.
Assistant District Attorneys

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Attorneys for the defendant.

21 William Cardenuto
22 Senior Court Reporter

23 Rozalia Melnick
24 Official Russian Interpreter

1 THE COURT: Do we have anything that needs to
2 be brought to the Court's attention with regard to the case
3 on trial?

4 All the parties are here. It's approximately
5 10:20 a.m. The jury is all here. The defendant can step
6 up.

7 Is there any preliminary matters that need to
8 be brought to the Court's attention now?

9 MR. GREENBERG: Yes, your Honor. I'm not sure
10 if you recall, but prior to the hearing, the former
11 prosecutor that was assigned to this case, Debra Cohen, and
12 I had a bench conference with you, and I believe some of
13 your notes may reflect that and at least part of it is on
14 the record in the transcript from the hearing, that Ms.
15 Cohen had indicated to me, and I believe to the Court, that
16 the knife which was recovered in Mr. Colon's apartment was
17 never positively identified by the complainant.

18 At the hearing, Detective Harvin testified
19 that she did positively identified the knife. Ms. Cohen
20 all along had indicated to me that the knife was never
21 positively identified by the complainant.

22 Ms. Channapati indicated to me that the
23 complainant has positively identified the knife, and I
24 believe, I can't -- she will speak for herself, but I had
25 the thought all along that the knife wasn't identified.

1 They are intending to introduce it, which
2 certainly they have the right to do; however, I'm going --
3 if that's the case, I'm going to need to subpoena Ms.
4 Cohen.

5 THE COURT: Well, let me hear from the People.

6 MS. CHANNAPATI: Your Honor, the testimony
7 from Detective Harvin during the hearing, which it came out
8 during the cross of Mr. Greenberg, is that the detective
9 showed Ms. Krioutchkova the knife and the hat and that she
10 identified them.

11 So my understanding is that he was on notice
12 that there was an identification by the victim of the
13 property and that was on November 14th, 2005, and,
14 moreover, there was discussion, of course, I wasn't there
15 for what happened off the record, your Honor, but what
16 happened on the record, and I'm just referring to the
17 minutes, was that, you know, there was a question as to
18 whether or not it was going to be introduced, and the
19 People at that point decided that they wanted to do the
20 hearing, because there was a possibility that we would
21 introduce that into evidence, and that's why it was left
22 open.

23 As to whether or not, in fact, the Court even
24 said -- I'm referring to the hearing minutes. Page 4, Line
25 12, the Court said, "Well, at this time they intend to use

1 it. That's the way I understand it. They are not
2 duty-bound to continue in that position. So this is on for
3 a Huntley, Wade, Mapp hearing."

4 MR. GREENBERG: Your Honor, the problem is
5 that there's been a change in how the People believe the
6 knife was recovered and identified.

7 THE COURT: Let me hear what you're saying.
8 There's a change as to what?

9 MR. GREENBERG: All along Ms. Cohen and her
10 predecessor Ms. Mason told me that the knife was never
11 identified by the complainant, never identified.

12 THE COURT: You say that both Ms. Mason, who
13 was on the case before, and then Ms. Debra Cohen told you
14 that the complainant had not identified the knife?

15 MR. GREENBERG: Correct.

16 THE COURT: However, the People say when we
17 got to the hearing, the suppression hearing, that was not
18 their position.

19 MR. GREENBERG: No. When we got to the
20 hearing, Ms. Cohen said, let's do the hearing, because I
21 would like to keep my options open, even though she
22 believed that the knife was never positively identified.

23 THE COURT: Did she say she believes that on
24 the record, Ms. Cohen? I don't have what you're saying,
25 and I don't recall any of it.

1 Obviously, we can all look at what's on the
2 record. I'll look at the court file, but I pretty much
3 remember what I write in terms of what I would have written
4 on the court action sheet. I don't think I wrote anything
5 to any of this effect.

6 I would be happy to look, but I have reviewed
7 my court action sheet. So, obviously, what's on the
8 record -- actually, I do say here, I wrote, "5/13 2005;
9 everybody was present;" I wrote, "Huntley, slash, Wade
10 hearing." I wrote, "Was knife recovered, question." Then
11 it was put over for the hearing on 5/24. I wrote, "People
12 believe knife was recovered and consented to a Mapp."

13 MR. GREENBERG: Well, your Honor, the People
14 all along believed that a knife was recovered. The
15 question was whether or not this was the knife that was
16 used on the day and time of the incident, and it was their
17 position all along that she had never identified the knife.

18 The question was at that point for the hearing
19 was whether or not the knife was recovered, you know,
20 within the constitutional limits and whether or not it was
21 suppressive, not whether or not it was ever identified.

22 If you bear with me, I'm going to find it. I
23 believe the initial Voluntary Disclosure Form --

24 THE COURT: Let's look for that.

25 MR. GREENBERG: I believe it says it was not

1 identified.

2 THE COURT: As we all know, this is an old
3 case. So we have to hunt for it on paper.

4 I have a Voluntary Disclosure Form in these
5 papers. It says, "Prepared by ADA Heidi Mason, dated April
6 14, 2003." With regard to Page 2, "Type of weapons, if
7 any, involved, knife," it says.

8 That's all it says.

9 MR. GREENBERG: I know there's some DA notes.
10 I have to find it.

11 MS. CHANNAPATI: Your Honor --

12 THE COURT: People, let him search.

13 MS. CHANNAPATI: I was going to say, do you
14 have a copy of the hearing minutes with you? Would you
15 like to refer to the People's copy?

16 THE COURT: I want to go one step at a time.

17 MS. CHANNAPATI: Okay.

18 THE COURT: While he's looking, I'll go over
19 here and see if I have it.

20 (Pause.)

21 THE COURT: All right. The defense counsel is
22 handing up a Voluntary Disclosure Form which has a little
23 different language than what I was looking at. So let's
24 see.

25 All right. I'll give this back to Counsel,

1 because it's there. I missed it. Underneath the part that
2 says, "type of weapons involved, if any, a knife," it says,
3 "weapon was recovered," then in parenthesis, "a folding
4 knife was recovered at the time of arrest, but was not
5 identified by the complainant."

6 So defense has found that.

7 Now, People.

8 MR. GREENBERG: Your Honor, I believe there's
9 another document, a DA generated document which was
10 disclosed to me which I can't find this second which also
11 indicates that the knife wasn't identified.

12 THE COURT: Let's say, with what we know so
13 far, we know a suppression hearing was held and that the
14 Court held that the knife is not suppressed. We know that
15 much. We also know now that the Voluntary Disclosure Form,
16 which is prepared by the People and served on the defense
17 says the knife was not identified.

18 Counsel believes there's another document
19 existing prepared by the People and sent to him that says
20 the knife was not identified by the complaining witnesses.

21 So, all of that the defense has established.

22 MS. CHANNAPATI: Your Honor, however, I'm
23 nonetheless referring to the minutes of the hearing where
24 on cross examination Detective Harvin was asked:

25 "QUESTION: As a result of your search, what

1 did you find?

2 "ANSWER: Two hats and a knife.

3 "QUESTION: Could you describe the hats that
4 you found.

5 "ANSWER: I have the photos here. Do you want
6 me to take a look at them?

7 "QUESTION: Sure.

8 "ANSWER: I have the photos somewhere here in
9 the case. It is a folding knife, a black knit cap, and a
10 black wool hat with a front piece to it.

11 "QUESTION: And you have a fourth photograph
12 there.

13 "ANSWER: It is the same picture.

14 "QUESTION: Same picture. Where did you take
15 these photographs?

16 "ANSWER: Where did I take them at?

17 "QUESTION: Yes.

18 "ANSWER: My office."

19 I'm going to just jump down, your Honor.

20 MR. GREENBERG: Your Honor, suffice it to say
21 Detective Harvin indicated that the knife was identified by
22 the complainant --

23 MS. CHANNAPATI: Page 51, Line 6:

24 "QUESTION: She identified the knife?

25 "ANSWER: Yes.

1 "QUESTION: What did she say about the knife?

2 "ANSWER: There was a particular design of the
3 knife, and she identified that knife.

4 "QUESTION: Did she specifically tell you that
5 that was the knife used?

6 "ANSWER: That's the knife he displayed.

7 "QUESTION: By the defendant?

8 "ANSWER: Yes.

9 "QUESTION: When did she do that?

10 "ANSWER: After I came back from the residence
11 with the photos, she was still present at the precinct, and
12 I had showed her the photos of the objects, and she
13 identified them.

14 "QUESTION: Where was she when she identified
15 them?

16 "ANSWER: At Brooklyn Special Victims Squad.

17 "QUESTION: In your office?

18 "ANSWER: Yes.

19 "QUESTION: And you showed her the
20 photographs?

21 "ANSWER: Yes.

22 "QUESTION: And which photograph did you show
23 her?

24 "ANSWER: I showed her all four."

25 I mean, it goes on, your Honor and --

1 MR. GREENBERG: Your Honor, the reason for
2 that inquiry is quite clear -- that I was told that there
3 was no knife, that the knife, although recovered, was never
4 identified. I was told on numerous occasions.

5 Obviously, at that point I was preparing to
6 cross examine Detective Harvin with respect to her memory
7 and the fact that whether or not the knife was identified.
8 The fact that she -- I mean, the People's direct case at
9 the hearing, they don't go into the identification of the
10 knife, and there was a reason for that.

11 MS. CHANNAPATI: Nonetheless, your Honor, the
12 hearing was in November 2005. It's now May.

13 THE COURT: What's your point?

14 MS. CHANNAPATI: May of 2006, Counsel has been
15 on notice.

16 MR. GREENBERG: I've been on notice that there
17 are -- Detective Harvin, although pretty much through her
18 testimony recalls very little with respect to the specifics
19 and the details surrounding this case, and when asked
20 direct questions with respect to a knife, I believe, and I
21 submit to the Court that she was not truthful.

22 THE COURT: But then the question is --

23 MR. GREENBERG: I base that, basically, on the
24 fact that all the way back in the date of his Voluntary
25 Disclosure Form, which, your Honor, is not dated by the

1 People --

2 THE COURT: I put a date on the top where it
3 says -- next to Ms. Mason, there's a date.

4 MR. GREENBERG: April 14, 2003, that the knife
5 was never identified.

6 Where did the District Attorney's Office get
7 this information from?

8 THE COURT: Counsel, I guess my question now
9 is if, A, the issue is the detective's credibility,
10 clearly, you have the ability to challenge that in cross
11 yourself, if that's the issue.

12 If the issue is the People didn't disclose it
13 to you, the People say it was. It was disclosed to you
14 during the course of the hearing. So you have the
15 disclosure. So I'm not sure what the legal issue is.

16 MR. GREENBERG: What it comes down to, your
17 Honor, is someone told the District Attorney's Office prior
18 to April 2003 that the weapon was never identified.

19 THE COURT: Somebody told them that or
20 somebody got it wrong. That's a possibility.

21 MR. GREENBERG: Your Honor --

22 THE COURT: I'm just giving you the
23 possibilities.

24 MR. GREENBERG: It's also possible that
25 Detective Harvin two and a half -- three and a half years

1 later was also mistaken.

2 THE COURT: At this point, Counsel, let me
3 hear if there's any application.

4 MR. GREENBERG: No. 1, first, I would like to
5 review the documents to find the second sheet of paper that
6 indicates --

7 THE COURT: I'll give you time to do that.

8 MR. GREENBERG: That indicates, who indicated
9 on a sheet of paper, who said that the items were never,
10 that the items was never identified.

11 THE COURT: I'll give you time for that.

12 MR. GREENBERG: Okay. Secondly -- and I don't
13 know whether or not -- I believe it was Ms. Mason at that
14 point that provided that information, and I would need to
15 know the whereabouts of Ms. Mason to subpoena her.

16 THE COURT: The People can provide that to
17 you, the whereabouts of Ms. Mason and Ms. Cohen. That will
18 take care of that.

19 Is there anything else?

20 Then we'll break for a few minutes to let you
21 inquire or search regarding that document, but then we're
22 ready to go.

23 MR. GREENBERG: Okay.

24 THE COURT: All right.

25 (Recess taken.)

1 THE COURT: Counsel, I presume you're still
2 searching.

3 People, with regard to your premarking, would
4 you just put it on the record.

5 MS. CHANNAPATI: Yes, your Honor.

6 I have premarked for identification only a
7 sketch of an apartment. It's been shown to defense
8 counsel, premarked as People's Exhibit No. 1 for
9 identification.

10 THE COURT: The sketch is an apartment?

11 MS. CHANNAPATI: Yes.

12 People's Exhibit No. 2, premarked for
13 identification, is the exterior or photographs of the
14 exterior of 1711 East 15th Street as well as photographs of
15 the hallway and --

16 THE COURT: Say the address again.

17 MS. CHANNAPATI: 1711 East 15th Street.

18 THE COURT: The exterior hallway?

19 MS. CHANNAPATI: Yes, before the apartment.

20 THE COURT: Go ahead.

21 MS. CHANNAPATI: Also, that's been shown to
22 defense counsel.

23 What's been premarked as People's Exhibit No.
24 3 for identification are interior photographs of the
25 bathroom and the kitchen of Apartment 1-A of 1711 East 15th

1 Street.

2 THE COURT: How many photographs?

3 MS. CHANNAPATI: A through H.

4 THE COURT: How many?

5 MS. CHANNAPATI: Eight.

6 THE COURT: How many were on the --

7 MS. CHANNAPATI: No. 2 was five photographs, A
8 through E.

9 THE COURT: Thank you.

10 MS. CHANNAPATI: And what's been premarked
11 People's Exhibit No. 4 are interior photographs of the
12 bedroom of 1711 East 15th Street, Apartment 1-A, and
13 there's six photographs of the bedroom.

14 THE COURT: All right.

15 MS. CHANNAPATI: That's it, your Honor.

16 THE COURT: All right.

17 MS. CHANNAPATI: A through F.

18 THE COURT: Counsel, we are ready to go.

19 MR. GREENBERG: Okay.

20 THE COURT: Obviously, you can search for
21 that, but the points have been made, and we've got all of
22 that on the record.

23 Now, the jury is ready, and they are here.
24 What we're going to do this morning is we're going to have
25 our openings, and then we're going to have witnesses called

1 by the People.

2 MR. GREENBERG: Your Honor, with respect to
3 instructing the jury, can you instruct them that the
4 defense does not have to open, although they may.

5 THE COURT: Let me tell you what I say.

6 "Once the People's opening statement has been
7 concluded, the defense counsel has the option to make an
8 opening statement, if defense counsel chooses to do so, but
9 defense counsel has no obligation to do so."

10 There's that same clause that I mentioned
11 before in our earlier instruction being -- "The defense is
12 not required to put on a defense or call any witnesses,
13 because of the presumption of innocence. If the defendant
14 chooses not to take the stand in his behalf, you may not
15 draw any negative inference from that. In other words, you
16 may not hold that against the defendant."

17 Do you want that, Counsel?

18 MR. GREENBERG: Yes.

19 THE COURT: All right. With regard to --
20 there's a reference that tells the jury I'm going to give
21 them detailed instructions regarding the law towards the
22 end. I say, "As I told you before, the defendant is
23 charged with" -- and what I'm going to say is what I've
24 already said, seven counts under the indictment, including
25 burglary in the first, rape in the first, assault in the

1 second, and criminal possession of a weapon
2 in the fourth; regarding note taking, the Court allows it.
3 I believe the court of appeals encourages it, and I have a
4 charge for jury note taking.

5 Is there anything? Otherwise, we're ready.

6 THE COURT OFFICER: Jury entering.

7 (Whereupon, the jury enters the courtroom and
8 is properly seated.)

9 THE CLERK: All jurors are present.

10 Do both sides waive the reading of the roll?

11 MS. CHANNAPATI: So waived.

12 MR. GREENBERG: Yes.

13 THE COURT: Good morning, ladies and gentlemen
14 of the jury. We are beginning to go forward. Just give me
15 a moment.

16 Ladies and gentlemen of the jury, it is
17 customary at the beginning of every trial that the Court
18 instruct you as to your basic functions, duties, and
19 conduct.

20 I'll also introduce you in a general way to
21 the procedure of the trial. This trial, the People of the
22 State of New York versus Dennis Colon, commenced with the
23 selection of the jury which we concluded yesterday.

24 As you can see, our jury is composed of 12
25 members. In addition, there are three alternate jurors.

1 If you are an alternate, you must pay as close attention to
2 the evidence as the jury. If, for any reason, any one or
3 more members of the jury is unable to serve, the alternate
4 would be required to step into the place of that juror.

5 The second part of the trial is about to
6 begin. This part is the opening statement by the Assistant
7 District Attorney who is representing the People of the
8 State of New York. In this opening statement by the
9 Assistant District Attorney, she's required to indicate to
10 you what the People intend to prove by way of evidence to
11 support the charges against the defendant.

12 Once the People's opening statement has been
13 completed, the defense counsel has the option to make an
14 opening statement, if the defense counsel chooses to do so,
15 but the defense counsel has no obligation to do so.

16 Now, what the lawyers say in an opening
17 statement is not evidence. An opening statement is, in a
18 sense, a preview of what that attorney expects the evidence
19 will show.

20 Next, the Assistant District Attorney will
21 present witnesses whom the Assistant District Attorney will
22 question. That is called direct examination. Once the
23 Assistant District Attorney completes her questions, the
24 defense counsel will be given an opportunity to question
25 that witness. That is called cross examination. This

1 process will continue for each witness that the Assistant
2 District Attorney will present to give testimony.

3 When the Assistant District Attorney finishes
4 calling all of her witnesses, the defendant will be given
5 an opportunity to present witnesses in his defense.
6 Remember, however, the defense does not have to prove
7 anything. Therefore, they do not have to cross examine any
8 of the People's witnesses, and the defense does not have to
9 offer their own witnesses.

10 Once both sides have finished presenting
11 witnesses, the defense and the Assistant District Attorney
12 will be given the opportunity to make closing remarks to
13 you. These closing arguments by the lawyers will not be
14 evidence. They are just arguments made by the lawyers to
15 discuss the facts and circumstances in the case, and those
16 arguments should be confined to the evidence and to
17 reasonable inferences to be drawn from the evidence.

18 As I indicated earlier, neither opening
19 statements nor closing arguments are evidence, and any
20 statement or argument made by the lawyers which is not
21 based on the evidence should be disregarded by you, the
22 jury.

23 After the closing arguments, I'll give you
24 detailed instructions on the law as it relates to this
25 particular case. After I finish those instructions, you,

1 the jury, will retire to deliberate to reach a verdict.

2 Now, I'll instruct you regarding evidence.

3 First, let me tell you what evidence is. Basically,
4 evidence consists of oral testimony under oath, any
5 stipulation by the parties, if we have any stipulations,
6 and physical exhibits which during the trial are introduced
7 by either Assistant District Attorney or by the defense and
8 which the Court allows into evidence. If an exhibit is
9 given to you to examine, you should examine it carefully,
10 individually, and without any comment.

11 Questions asked by either lawyer or even a
12 question asked by me are not, in and of themselves,
13 evidence. Only questions which are coupled with answers
14 are evidence. Therefore, you may not infer any fact from
15 the mere asking of a question.

16 The reason I point this out to you is simple.
17 During the course of questioning, the Assistant District
18 Attorney and the defense attorney may exercise their right
19 to object to the other's questions or to an answer to be
20 given to a question or to the introduction of an exhibit on
21 the ground that that lawyer believes it is somehow legally
22 improper or inadmissible.

23 At that point I'll either sustain or overrule
24 the objection. If I sustain an objection to a question,
25 you must disregard the question and any answer, if one has

1 been given. You must also draw no inference from the
2 question or from any answer, nor are you to speculate as to
3 what the witness would have said if permitted to answer.

4 Evidence which the Court orders stricken from
5 the record must, likewise, be disregarded. On the other
6 hand, if I overrule an objection, the question will be
7 allowed to be answered or the answer will stand and it will
8 remain as evidence. When I overrule an objection to any
9 evidence, you must not give such evidence any more weight
10 than if the objection had not been made.

11 Please, bear in mind that my rulings on the
12 law are simply that and under no circumstances are my
13 rulings to be considered by you as indicating that the
14 Court has an opinion as to the guilt or innocence of the
15 defendant. Under our law, the Court may not and will not
16 entertain any opinion as to the guilt or non-guilt of the
17 accused.

18 Members of the jury, it is you and you alone
19 who are the sole and exclusive judges of the facts in this
20 case.

21 Now, you must understand that objections from
22 the lawyers may come quickly and at times either lawyer
23 might even seem rude. Please, do not resent this or
24 penalize either party, because of it. Understand, it is
25 their job and my job to monitor that.

Judge's Opening Charge

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1 As I stated to you at the beginning of the
2 trial, you, the jury, are the triers of the facts;
3 therefore, it will be up to you, the jury, to decide which
4 witness to believe and which witness not to believe.

5 Furthermore, you will decide how much of each
6 witness' testimony to accept and how much to reject.
7 Please, use your common sense in evaluating all testimony.
8 All that is asked of you is that you apply the same common
9 sense rules that you would apply in your everyday lives to
10 determine who is telling you the truth, who is not, and who
11 is telling you something less than the full truth.

12 Please, remember that it is the quality of the
13 evidence which controls, not the quantity of the evidence
14 or the number of witnesses called by either side.

15 While you, the jury, are the sole judges of
16 the facts, my job is to be the sole judge of the law. You
17 must accept the law as I give it to you without any
18 hesitation or reservation. You must accept the law as I
19 give it to you even if you privately disagree with me or
20 the law.

21 There are three basic principles of law which
22 apply to this and to all criminal cases. They are the
23 presumption of innocence, the People's burden of proof,
24 and, finally, the standard of proof.

25 First, there is a presumption of innocence.

Judge's Opening Charge

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1 The defendant is presumed innocent. That presumption
2 remains with the defendant throughout the trial, and the
3 presumption is not removed unless and until the defendant's
4 guilt is proven to you, the jury, beyond a reasonable
5 doubt.

6 The accusatory instrument containing the
7 charges against the defendant which I have already referred
8 to is only an accusation, nothing more. That accusatory
9 instrument is not proof of guilt or anything else;
10 therefore, since no evidence has been presented to you as
11 of this moment, if you were to deliberate right now, you
12 would have to find the defendant not guilty.

13 Second, there's the People's burden. The
14 burden of proof is on the People. The defense has no
15 burden, and the defense is not required to do anything to
16 prove the defendant's innocence.

17 Why?

18 Because the defense has the option of sitting
19 back and doing nothing, because they have no burden of
20 proof, and the defendant is presumed innocent. The
21 defendant is not required to put on a defense. The
22 defendant is not required to call any witnesses, because of
23 this presumption of innocence. If the defendant chooses
24 not to take the stand to testify in his behalf, you may not
25 draw any negative inference from that. In other words, you

1 may not hold that against the defendant.

2 Third, there is the standard of proof. The
3 People are required to prove the defendant's guilt beyond a
4 reasonable doubt. This standard does not require the
5 People to prove the defendant's guilt beyond all doubt or
6 to a mathematical certainty.

7 The People do, however, have to prove the
8 defendant's guilt beyond a reasonable doubt. A doubt is
9 not reasonable if instead of being based on the nature and
10 quality of the evidence or on the insufficiency of the
11 evidence the doubt is based on a guess, a whim, or
12 speculation unrelated to the evidence.

13 As I told you at the beginning, the defendant
14 in this case is charged with seven counts, including
15 Burglary in the First Degree, Rape in the First Degree,
16 Assault in the Second Degree, and Criminal Possession of a
17 Weapon in the Fourth Degree.

18 In my final instructions to you at the end of
19 the trial, I'll give detailed instructions on the law as it
20 relates to these specific charges. These instructions then
21 are intended to guide you through your deliberation and to
22 enable you to reach your decision.

23 Finally, now, I'll instruct you as to how you
24 must conduct yourselves during this trial. First, you must
25 keep an open mind throughout the trial. You are not

1 allowed to talk amongst yourselves or with anyone else
2 about any subject connected with this trial.

3 You are not allowed to offer or express an
4 opinion as to the defendant's guilt or innocence until I
5 finally give you the case for your deliberation. You are
6 not allowed to read or listen to any accounts or
7 discussions of the case if it were to be reported in the
8 newspapers or any other news media. You're not allowed to
9 visit the premises or place where the offense was charged
10 or allegedly committed or any other place or premises
11 involved in this case.

12 You may, but are not required, to take notes
13 during these proceedings. If you wish to take notes, we'll
14 provide you with materials for that purpose.

15 If you decide to take notes, you must follow
16 these rules: You must not permit note taking to distract
17 you from the proceeding. Any notes which were taken are
18 only an aid to your memory and must not take precedence
19 over your independent recollection.

20 Those jurors who choose not to take notes must
21 rely on their own independent recollection and must not be
22 influenced by any notes that another juror might take. Any
23 notes which are taken are only for personal use in
24 refreshing the juror's recollection.

25 A juror's notes are not a substitute for the

Judge's Opening Charge

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1 recorded transcript of the testimony or for any exhibit
2 received into evidence. If there is a discrepancy between
3 a juror's recollection and his or her notes regarding the
4 evidence, you should ask to have the relevant testimony
5 read back to you or to have the exhibit produced in the
6 jury room.

7 In addition, a juror's notes are not a
8 substitute for the detailed explanation that I have given
9 and will give to you concerning the principles of law which
10 govern this case.

11 If there is a discrepancy between a juror's
12 recollection and his or her notes regarding those
13 principles, you should ask me to explain those principles
14 again, and I will be happy to do so.

15 Each juror who intends to take notes shall
16 print his or her name on the top of the book. At the end
17 of each trial day until the jury retires to deliberate, the
18 notes will be collected from each juror who takes notes. A
19 juror may refer only to his notes during the proceedings
20 and during the deliberations.

21 Any notes which are taken are confidential and
22 shall not be available for examination or review by any
23 party or other person. After the jury has rendered it's
24 verdict in this case, we'll collect the notes and destroy
25 them.

1 Prior to your discharge as a juror, you may
2 not request, accept or agree to accept any payment of
3 benefit in consideration for supplying any information
4 concerning this trial. Further, you may not have a
5 discussion with any person regarding the receiving or
6 payment of any benefit in consideration for supplying any
7 information concerning this trial, and then you must
8 promptly report to me any incident to your knowledge
9 involving any attempt by any person to influence any member
10 of this jury. I have just told you that you must report to
11 me any attempt by anyone to improperly influence you.

12 The lawyers in the case are not permitted to
13 have any contact with you ladies and gentlemen of the jury,
14 other than what takes place on the record during the course
15 of this trial; therefore, if you were to see either of the
16 lawyers outside in the hallway or outside on the street and
17 if that lawyer doesn't say hello to you or even make eye
18 contact, you may not hold that against the lawyer.

19 It is their job not to have contact, and I can
20 assure you that there have been many cases where somebody
21 said, I saw that juror laughing with that lawyer, and that
22 came up a lot in civil. So one party thought the other
23 party had made friends. You can't have that. So that's
24 why we don't have contact and that applies to me as well.
25 So it all takes place on the record.

1 Now, ladies and gentlemen, the Assistant
2 District Attorney will make her opening statement.

3 MR. GREENBERG: Your Honor, may I have a
4 sidebar?

5 THE COURT: Come up.

6 (The following proceedings were had outside
7 the presence of the jury:)

8 MR. GREENBERG: Just to go back a little bit
9 before the People start, I am concerned that they will
10 introduce evidence of the knife without themselves knowing
11 what happened previously in this case and either putting
12 themselves in a position where their conduct can be
13 considered prosecutorial misconduct at the minimum, at the
14 maximum suborning perjury.

15 Early in this case there was a clear
16 indication that the knife was never identified by the
17 complainant. They can put the complainant on the stand,
18 and that complainant is going to identify that knife in
19 direct contradiction to the disclosures close in time to
20 the incident, and I think, personally, that they are
21 setting themselves up for a huge problem without first
22 investigating whether or not what was in that disclosure
23 was correct.

24 By not knowing that disclosure existed before
25 coming into this courtroom today is a problem, and the fact

1 that I haven't seen them make a phone call to
2 determine whether or not that disclosure is correct or even
3 trying to determine whether that disclosure is correct is
4 of huge concern to the fairness of this trial.

5 THE COURT: All right. People.

6 MS. CHANNAPATI: Your Honor --

7 THE COURT: Are you covering the knife in your
8 opening?

9 MS. CHANNAPATI: No.

10 THE COURT: The Court rules that Counsel had
11 ample opportunity to raise this before bringing this to my
12 attention in the presence of the jury, and I am not happy
13 with that. I am ruling that we proceed with the opening.

14 I'll take it up later.

15 MR. GREENBERG: That's all I wanted.

16 (The following proceedings were held in open
17 court and in the presence of the jury:)

18 THE COURT: The People will proceed with their
19 opening.

20 MS. CHANNAPATI: Good morning.

21 You are going to hear about what happened to
22 Vera Krioutchkova in March of 2003 when she was 56 years
23 old. A retired teacher and medical assistant, she
24 immigrated from Russia in 1995 and became a citizen of this
25 country in 2001.

1 In March of 2003 she was living in a one
2 bedroom apartment at 1711 East 15th Street, Apartment 1-A,
3 here in Brooklyn, Kings County, with her daughter and her
4 10 year old granddaughter.

5 You will hear that Vera was having problems
6 with her apartment. There were huge leaks in the bathroom.
7 There was a leak in the kitchen, and she had told her
8 landlord repeatedly about them, and overtime different
9 repair men had come to the apartment to repair the leaks.

10 The week before March 26th, 2003, you're going
11 to hear that she informed her landlord, again, that there
12 was a leak in the bathroom and that it needed to be fixed,
13 and she was told that someone was going to come and take
14 care of it.

15 On March 26th, 2003, at approximately 8:00 in
16 the morning, Vera got a phone call from a man who said that
17 he was sent by the landlord to fix a leak and that he would
18 be over in a few minutes to take a look at it. This was a
19 phone call that Vera was hoping for. She wanted the leak
20 fixed.

21 A man came to the door, and she let him in.
22 He walked around the apartment. He was looking at the
23 bathroom fixtures, looking at the kitchen, looking under
24 the sink, turning faucets on and off, doing all the things
25 that you would expect a plumber to do. He took some notes

1 and Vera followed him as he started walking towards the
2 door.

3 That's when Vera's nightmare started. Vera
4 looked up and saw the man had a knife in his hand, and he
5 said to her, "Lay down or I'll kill you. Lay down or I'll
6 kill you." The man backed her up into her bedroom, pushed
7 her on the bed where her daughter slept, knife still in his
8 hand, and he forced her on the bed, put her arms behind
9 her, spread her legs, and forcibly put his penis in her
10 vagina, and that, ladies and gentlemen, that man was Dennis
11 Colon, the defendant.

12 The defendant left the apartment telling Vera
13 to take a shower. Vera didn't listen. She called the
14 police immediately and was taken in an ambulance to Coney
15 Island Hospital.

16 There, she was seen by a sexual assault nurse
17 examiner who performed a sexual assault examination and
18 complete sexual offense evidence collection kit. You will
19 hear that they took swabs of Vera from all different parts
20 of her body.

21 Now, the People did an extensive investigation
22 part of which was looking at Vera's phone records, because
23 the defendant called her before he came to her apartment.
24 They traced that phone number to the defendant, to the
25 defendant's home on East 16th Street, and there he was

1 apprehended by the police.

2 The police did a lineup and Vera identified
3 the defendant as her attacker, and the sexual offense
4 evidence collection kit that the nurse performed in the
5 hospital, there was male semen found on Vera, and when that
6 semen was testified for DNA, that DNA matched the DNA of
7 the defendant.

8 Ladies and gentlemen, you were all selected to
9 be jurors in this case, because you said you could convict
10 on the testimony of one witness, that you could keep an
11 open mind, and that you could follow the judge's
12 instruction.

13 I'm going to ask that you listen to the
14 evidence, that you remember that, and I am confident that
15 at the end of the case you will render the only just
16 verdict and find the defendant guilty beyond a reasonable
17 doubt of Burglary in the First Degree, Rape in the First
18 Degree, Sexual Abuse in the First Degree, Assault in the
19 Second Degree, and Criminal Possession of a Weapon in the
20 Fourth Degree.

21 Thank you very much.

22 THE COURT: Thank you, People.

23 The People have made their opening statement.

24 Does the defense wish to make on an opening?

25 MR. GREENBERG: Yes, briefly.

1 THE COURT: All right.

2 MR. GREENBERG: Good morning.

3 This is my first opportunity to address you as
4 a whole unit. Some of you were in one panel; some of you
5 were in another. I'm just briefly going to tell you that
6 once you've heard all of the evidence in this case, you
7 will determine that the sexual encounter between the
8 complainant and Mr. Colon was consensual and that the
9 complainant agreed to have sex with him.

10 Quite simple, I'm going to ask again that you
11 wait to hear all the evidence before you make your
12 determination. Also, I want you to hesitate and listen to
13 the evidence, because you're going to see there's going to
14 be a lot of items introduced into evidence.

15 The Judge has previously instructed you that
16 it's the quality of the evidence and not quantity. You're
17 going to need to listen to the critical portions of this
18 case and not just a mass of evidence.

19 I, specifically, direct you to examine the
20 credibility of the complainant, the detectives involved,
21 and the police officers involved, the credibility, the
22 believability, whether or not you trust them.

23 At the close of this case, I'm going to come
24 to you and I'm going to ask you to render a verdict of not
25 guilty. At that time, I'll pull it all together for you in

1 a nice neat package.

2 Thank you.

3 THE COURT: Thank you, defense.

4 Let's approach over here again.

5 (The following proceedings were held at
6 sidebar.)

7 THE COURT: Logistically, are we ready to
8 start right now? The interpreter is here.

9 MS. CHANNAPATI: Yes.

10 THE COURT: Okay.

11 (The following proceedings were held in open
12 court and in the presence of the jury:)

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL TERM - PART: 3
-----X

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

INDICTMENT NO.
2518/2003

5 DENNIS COLON,

6 Defendant.

-----X
7 320 JAY STREET
8 BROOKLYN, NEW YORK 11201
9 JUNE 1, 2006

10 B E F O R E:

11 HONORABLE JAMES P. SULLIVAN,
Justice and jury

12 A P P E A R A N C E S:

13 CHARLES J. HYNES, ESQ.
14 District Attorney, Kings County
15 BY: ANITA CHANNAPATI, ESQ.
16 BY: LOUISE COHEN, ESQ.
17 Assistant District Attorney

18 HARLAN GREENBERG, ESQ.
19 DENNIS PETRE
20 30 Vesey Street, 15th Floor
21 New York, New York
22 Attorneys for the Defendant

23 William Cardenuto
24 Senior Court Reporter

25 Rozalia Melnik
Official Russian Interpreter

1 THE COURT: People.

2 MS. CHANNAPATI: Your Honor, at this time the
3 People call Vera Krioutchkova.

4 THE COURT: All right. The witness will come
5 up. The interpreter is with the witness. That is a court
6 interpreter.

7 V E R A K R I O U T C H K O V A, called as a witness, after
8 being duly sworn, testified as follows:

9 THE COURT: She has been sworn in. Now, the
10 People may proceed. Let me say, regarding the interpreter,
11 obviously, this is a logistical thing. So we take a little
12 more time, because she has to interpret everything said.

13 Now, the People will begin by asking their
14 questions.

15 DIRECT EXAMINATION

16 MS. CHANNAPATI:

17 Q. Ms. Krioutchkova, how old are you?

18 A. 59.

19 Q. Where were you born?

20 A. In Russia.

21 Q. When did you move to the United States?

22 A. 1995.

23 MR. GREENBERG: Excuse me?

24 THE COURT: 1995.

25 MR. GREENBERG: Can we have the witness speak

1 up. I can't hear her.

2 THE COURT: Let me try it this way. You've
3 got an interpreter, and you've got to hear. So we really
4 have to hear the interpreter.

5 MR. GREENBERG: Well, we also need to hear the
6 witness.

7 THE COURT: I'm hearing. If I think you're
8 not hearing, I'll rule then. Please sit down, Counsel.

9 Q. Ms. Krioutchkova, are you a citizen of the United
10 States?

11 A. Yes.

12 Q. When did you become a citizen?

13 A. 2001.

14 MS. CHANNAPATI: Ms. Krioutchkova, could you
15 face me when you answer the questions and speak into the
16 microphone.

17 THE COURT: We have a microphone. Speak into
18 the microphone.

19 Proceed.

20 Q. Are you married?

21 A. No.

22 Q. Do you have any children?

23 A. Yes.

24 Q. Were you married at one point?

25 A. Yes.

1 Q. Now, did you pick up the phone when the phone rang?

2 A. Yes.

3 Q. Did you recognize the voice on the other line?

4 A. I heard a man's, not familiar, voice.

5 Q. Did the man say who he was?

6 A. No. He asked me my name and my last name.

7 Q. Did he ask you your name and your last name?

8 A. He asked my first name and last name, and after, he
9 says, "It's you?" And I was saying, "Yes."

10 Q. What else did he say?

11 A. He was saying, I'm a plumber and Guy send me.

12 Q. What did you say?

13 A. He asked if I have a problem with the water, and I was
14 saying, "Yes."

15 Q. What else did he say?

16 A. He was saying, Guy send me to fix it.

17 Q. What did you say?

18 A. I was telling him, I cannot do now, because I am
19 preparing myself to go to a doctor.

20 Q. What did he say?

21 A. He was saying, I'll not take a lot of time. I would
22 like only to see and the job I'll do in the evening.

23 Q. What did you say to that?

24 A. I was saying, again, "I cannot do it now," but he was
25 insisting, and he was saying, "It will be fast."

1 Q. So what did you say then?

2 A. After I was saying, "Okay, come in," and I was happy
3 to hear someone was coming and fix the problem.

4 Q. When you received that phone call, was anyone else in
5 the apartment?

6 A. No, I was by myself.

7 Q. Where were your daughter and granddaughter?

8 A. They left. My daughter went to college, and my
9 granddaughter went to school.

10 Q. What time did they leave?

11 A. It was approximately a quarter to 8:00.

12 Q. Now, when you received the phone call, what were you
13 wearing at that time?

14 A. I was wearing a gown after the shower.

15 Q. Now, after the phone call, did there come a point
16 where someone came to your door?

17 A. Yes.

18 Q. How much time passed between when you got off the
19 phone with the man and when someone came to your door?

20 A. Approximately -- approximately, 10, 15 minutes, and
21 probably less, maybe five minutes.

22 Q. Now, when someone came to your door, did you say
23 anything?

24 A. I heard a noise. I cannot recall if it was the bell
25 ring or a knock to the door.

1 Q. How many children do you have?

2 A. Two.

3 Q. Do you currently work?

4 A. No.

5 Q. Did you previously work?

6 A. Yes, I was working.

7 Q. What did you do before?

8 A. I was an assistant physical therapist.

9 Q. Did you work when you were in Russia?

10 A. Yes, I was working.

11 Q. What did you do there?

12 A. I was a teacher.

13 Q. Now, Ms. Krioutchkova, how is your English?

14 A. Not bad.

15 Q. Are you more comfortable speaking through an
16 interpreter?

17 A. I understand better when I have an interpreter.

18 Q. I'm going to direct your attention to March of 2003,
19 where were you living at that time?

20 A. 1711 East 16th Street.

21 Q. I'm sorry. What was the address?

22 A. 1711 East 16th street.

23 Q. Is it East 16th Street or East 15th Street?

24 A. 15th.

25 Q. Were you living alone -- excuse me. Was that in

1 Brooklyn?

2 A. Brooklyn, yes, in Brooklyn.

3 Q. Were you living alone?

4 A. I was living with my daughter and my granddaughter.

5 Q. How old was your daughter at that time?

6 A. 33.

7 Q. How old was your granddaughter at that time?

8 A. 10.

9 Q. What apartment did you live in?

10 A. Apartment number?

11 Q. Yes.

12 A. 1-A.

13 Q. When did you first move into that apartment?

14 A. In 1995.

15 Q. Did you ever have problems with the apartment?

16 A. Yes, I was having problems.

17 Q. What kind of problems?

18 A. The pipes were old and the water was leaking, and the
19 ceiling was falling apart, because of wet, and the wall was
20 falling apart between the kitchen and the bathroom.

21 Q. How long did you have these problems?

22 A. I got for a long time, like, around three years.

23 Q. Who was your landlord?

24 A. Guy Gasibson (phonetic).

25 Q. Did you pay your rent to him?

1 A. Yes, regularly.

2 Q. Who was Guy Schebovitz?

3 A. It was two men, one is landlord, and after the second
4 was like his co-worker who was getting assignments.

5 Q. Who did you pay your rent to?

6 A. I was bringing to the office, and whoever was in the
7 office I was leaving the money.

8 Q. When you had problems with your apartment, whom did
9 you tell?

10 A. I was talking to the landlord and to his co-worker.

11 Q. Were you having problems with your apartment in March
12 of 2003?

13 A. Yes.

14 Q. Directing your attention to the week before March
15 26th, 2003, did you tell your landlord about the problems in
16 your apartment?

17 A. Yes.

18 Q. What problems did you tell him about?

19 A. The water was leaking in the bathroom where you wash
20 the hands and the water was leaking from the ceiling in the
21 kitchen.

22 Q. Did you have a conversation with him about the water
23 problem?

24 A. Yes.

25 Q. Did the landlord say he was going to send someone to

1 fix it?

2 A. Yes.

3 Q. Did you believe that the landlord was going to send
4 someone to fix it?

5 A. Very seldom I was complaining to him, and always I was
6 believing -- or trusted him.

7 MS. CHANNAPATI: Could you repeat that?

8 THE COURT: Let the interpreter repeat what
9 she said.

10 What did you say? Repeat it.

11 THE INTERPRETER: Always I was complaining,
12 and the landlord was -- I trusted him.

13 Q. Now, did you have -- when you told him about the
14 problems with your apartment before March 2003, did he send
15 someone to come and fix those leaks?

16 A. Yes, he was sending.

17 Q. Did he send the same person each time to fix the
18 leaks?

19 A. No. It was different people.

20 Q. Now, I'm going to direct your attention to
21 approximately 8:00 a.m. on March 26th, 2003. Did there come a
22 point where you received a phone call?

23 A. Yes.

24 Q. What was your phone number at that time?

25 A. 718-787-1125.

1 Q. Did you see who was at the door?

2 A. I looked, yes, and I saw a man.

3 Q. Did you say anything when you saw it was a man?

4 A. I asked who, and he was saying, "I'm the one who was
5 calling."

6 Q. Now, the man that you saw, had you ever seen him
7 before?

8 A. No.

9 Q. Did he tell you his name?

10 A. No, he didn't say.

11 Q. Did you later learn what his name was?

12 A. Yes.

13 Q. What name did you learn?

14 A. Dennis Colon.

15 Q. Now, did you let that man in?

16 A. Yes.

17 Q. Describe what you saw Dennis Colon wearing. Describe
18 what you saw Dennis Colon wearing at that time.

19 A. He was wearing on his head a hat and a black leather
20 jacket and the shirt was Khaki color and with buttons in front.

21 Q. Do you know what else he was wearing?

22 A. He was wearing blue jeans and brown belt, and he was,
23 the face was round, and he got facial hairs from the ear around
24 his --

25 THE INTERPRETER: What she's showing.

1 MS. CHANNAPATI: Let the record indicate --

2 THE COURT: The interpreter cannot speak to
3 me. There is a gesture which the witness has made, and you
4 and the witness will have to figure that out from Russian
5 to English.

6 MS. CHANNAPATI: If the record could indicate
7 that the victim is indicating from her ear across her chin
8 up to her other ear.

9 THE COURT: The complaining witness is making
10 a gesture from the ear to other ear on the face, but we
11 don't know the word that has been used.

12 THE WITNESS: He got a narrow beard which
13 started from one ear to the other.

14 Q. Now, did you notice anything about how he smelled?

15 A. You can smell alcohol from him.

16 Q. Was he carrying anything with him?

17 A. I didn't see anything.

18 Q. Ms. Krioutchkova, I'm going to ask, with the Court's
19 permission, for you to look around the courtroom, and if you
20 see the person that came to your apartment that day, if you
21 could please point to him and describe an article of clothing
22 that he's wearing.

23 A. Yes, I can see.

24 Q. Could you please point to him and describe an article
25 of clothing that he's wearing.

1 THE COURT: What is he wearing?

2 THE WITNESS: A dark gray jacket. He has a
3 light shirt, but a little bit greenish.

4 THE COURT: The witness has identified the
5 defendant.

6 Q. What did you do when the defendant came into your
7 apartment?

8 A. He came in. I pointed to him with my hand on the
9 right side. This was very close to the entrance door and the
10 door to the bathroom.

11 He asked me, "What is the problem?"

12 I told him. He started looking very carefully. He
13 opened the faucet, and after he was standing on his knee and
14 looked under the sink.

15 Q. The sink?

16 A. Yes. And he looked on the bathtub and was asking,
17 "You have a problem here, too," and I was saying him, "Yes," to
18 him, and he asked, "Do you have another problem?" And I was
19 showing him to the ceiling. At this moment I was thinking,
20 like, maybe he will fix it now.

21 Q. Okay.

22 A. And after he asked for a pen or a pencil and a piece
23 of paper, because he have to write down.

24 Q. Did you give him a pen and paper?

25 A. Yes.

1 Q. Did you see him do anything with it?

2 A. He was writing down one line.

3 Q. How long did he take to look around?

4 A. Not long, maybe five minutes, maybe ten minutes.

5 Q. After he took some notes, what happened next?

6 A. I didn't see what he did with the paper. He was
7 saying he will come in the evening to do the repair, and he was
8 walking toward the door to leave.

9 Q. What were you doing as he was walking toward the door?

10 A. I went after him to let him out.

11 Q. What happened as you were walking out, as you were
12 following him out?

13 A. When I was walking after him, I looked down, and in
14 front of me, it was his back. When I pulled my eyes up, I saw
15 his face. He turned around facing me, and his right arm was
16 up, and he was holding a knife.

17 Q. What did he say to you?

18 A. I saw his very mad face, and he start repeating, "Lie
19 down. I'll kill you. Lie down. I'll kill you."

20 Q. What were you thinking at that point?

21 A. I was so fearful, I cannot describe. I couldn't
22 imagine this could happen. Right away in my mind was my
23 daughter and my children and my grandchild. I couldn't
24 imagine, like, this was the end of my life. I thought my life
25 just begin, and I was remembering the incident when near the

1 subway a Russian man was killed.

2 MR. GREENBERG: Objection, your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: He was meeting his wife, and he
5 was an officer.

6 Q. Now, when you saw the defendant with the knife, at
7 that point did you want him in your apartment?

8 THE INTERPRETER: Excuse me?

9 Q. When you saw the defendant with the knife, did you
10 want the defendant in your apartment?

11 A. I -- right away I realize what is going on, and I was
12 screaming, "Help me," and I was running to the door, but he was
13 pushing me. He didn't let me open the door and started
14 repeating, "Lie down. I'll kill you. Lie down. I'll kill
15 you."

16 Q. Ms. Krioutchkova, did the defendant have your
17 permission to stay in your apartment at that point?

18 A. When I saw this, I was saying, "Get out," and I was
19 screaming for help.

20 Q. How did he look to you? How did the defendant look to
21 you?

22 A. I didn't look. I was afraid to look at him, but, in
23 general, his face was scary and mad.

24 Q. How were you positioned when he first pulled out the
25 knife? How were your bodies positioned?

1 A. I didn't see when he pulled out the knife, but when I
2 pull my eyes up, I saw, I was seeing him turn around facing me,
3 and the right arm was up, and the hand was with the knife.

4 Q. You said he pushed you. How did he push you?

5 A. I was saying, "Get out from here. Help me. Help me."
6 And he pushed me very hard. He pushed me, and I was falling,
7 like, backwards. He was following me.

8 Q. Where on your body did he push you?

9 A. He pushed me with his left hand in my chest. He
10 pushed me, like, with all his body. I was trying to get out
11 from him, and I wasn't able to.

12 Q. What happened after he was pushing you?

13 A. He pushed me from him, and he started following me and
14 was moving his hands up and down with the arm -- with the knife
15 in his hand up and down and was saying, "Lie down. Lie down.
16 I'll kill you."

17 Q. Were you still facing him?

18 A. Yes.

19 Q. What happened next?

20 A. When he was doing this, he was moving his arm, and
21 little by little, I was stepping backwards, but he was, like,
22 after me.

23 Q. Were you saying anything at that point?

24 A. I was begging, "Don't kill me. Don't kill me." I was
25 begging him, "You can take whatever you want, but don't kill

1 me."

2 Q. What happened next?

3 A. After when I realized what he wants from me, I was
4 saying, "Don't touch me. I am sick."

5 Q. Why did you tell him that you were sick?

6 A. I was hoping if he will hear, he will leave me alone.

7 Q. Did he leave at that point?

8 A. No. He was laughing, and he was saying, "You're sick?"

9 No. No."

10 Q. What happened next?

11 A. After we crossed, he closed the door with the kitchen
12 on the second room.

13 Q. What happened when you got into the second room?

14 A. A bed was staying nearby, and he pushed me to the bed.

15 Q. Did you fall on the bed?

16 A. Yes.

17 Q. What happened next?

18 A. After, he put my hands behind me, and he pushed me
19 with his body.

20 Q. How was he positioned with respect to you?

21 A. I was lying on my back, and my leg was on the floor.
22 He was with his body -- he squeezed my body.

23 Q. Were you able to get up?

24 A. No.

25 Q. Why not?

1 A. He's strong.

2 Q. Did he do anything with your legs?

3 A. Yes. He spread my legs, and he, with his hand, he
4 entered my vagina.

5 Q. What happened at that point?

6 A. I experienced pain, and I was saying, "Your hand are
7 so dirty, maybe you will go and wash your hand."

8 Q. Why did you say that?

9 A. I thought that maybe if he will go, I'll have a chance
10 to get out to the door.

11 Q. What happened after you said that?

12 A. After, he stand up, and he grabbed me from my clothes,
13 and he embraced me, he embraced me, and he walked to wash his
14 hands together with me.

15 Q. So where were you when he was washing, when the
16 defendant was washing his hands?

17 A. He came to the faucet, and he pushed me to the table,
18 and he start washing his hands, but his body was so tight with
19 my body, I couldn't move.

20 Q. Was your body in between him and the sink?

21 A. All together. This is, like, a table, but this is the
22 sink with the table. My body was between the sink and between
23 him.

24 Q. What happened after -- did he finish washing his
25 hands?

1 A. He washed his hands, and he dragged me again to the
2 bed.

3 Q. What happened when you got to the bed?

4 A. He pushed me toward the bed, and he squeezed me, and
5 he spread my legs.

6 Q. How was your body positioned when you were on the bed
7 this time?

8 A. I was on my bed, and my legs on the floor.

9 Q. Where was his body?

10 A. He was on top of me.

11 Q. What happened next?

12 A. He open his zipper of his pants.

13 Q. What did he do next?

14 A. He pull out his penis, and he put inside of my vagina.

15 Q. Did you feel any pain at that point?

16 A. I was feeling excruciating pain.

17 Q. Where were you feeling it?

18 A. In my vagina.

19 Q. Did he say anything at that point?

20 A. He was repeating all the time, "I'll kill you," and I
21 was begging him, "Don't kill me."

22 Q. What happened next?

23 A. All the time he was saying, "Close your eyes." He
24 slapped me in the face so I'll turn my head.

25 Q. What happened next?

1 A. And he stand up and he was holding in his hand a paper
2 towel, and he was holding for long time this paper on his
3 penis.

4 Q. What did he do at that point?

5 A. And with disgusting expression on his face looked at
6 me.

7 Q. What happened next?

8 A. And after he was saying, telling, "Take a shower," and
9 he ran away.

10 Q. Before he left the apartment, did you see him
11 ejaculate?

12 A. He was holding the paper for long time, covering his
13 penis.

14 Q. When this happened in the apartment, what was the
15 lighting like in the apartment?

16 A. It was light, and it was daylight.

17 Q. How close were you to the defendant when this
18 happened?

19 A. Very close, nose to nose.

20 Q. Was there anything covering his face?

21 A. Nothing, it was open.

22 Q. Was there anything blocking your view of the defendant
23 when this was happening?

24 A. I very well saw his disgusting face.

25 Q. Now, you said there came a point when he left?

1 A. Yes.

2 Q. What happened -- withdrawn.

3 What did he say to you before he left?

4 A. He was saying, "Take a shower," and "Don't call the
5 police."

6 Q. Did you take a shower?

7 A. No.

8 Q. Ms. Krioutchkova, the bed where this happened, who
9 sleeps in that bed?

10 A. My daughter.

11 Q. Do you sleep in that bed ever?

12 A. No. I have a separate bed.

13 Q. After he left, what did you do?

14 A. I came to the door, I locked the door, and I called
15 the police.

16 Q. Did the police arrive?

17 A. Yes, arrived.

18 Q. Did you speak with them?

19 A. Yes, I spoke.

20 Q. Did there come a point where an ambulance came?

21 A. Yes.

22 Q. Did the ambulance take you anywhere?

23 A. Yes. Yes. They took me to the hospital.

24 Q. What hospital did they take you to?

25 A. Coney Island Hospital.

1 Q. What happened when you went to the hospital?

2 A. They brought me to the emergency room; they took
3 tests; two police officers came; they took tests; and after
4 they took from my mouth and from my vagina and they took from
5 my hands also tests; and they took the gown which I was
6 wearing; and after they got something down in, they shake this
7 before they took with them.

8 Q. What did they shake?

9 THE INTERPRETER Night gown.

10 A. And after, they set up an appointment to go to the
11 gynecologist, and in the same time, the gynecologist examined
12 me in another cabinet, and he prescribed a medicine for me for
13 HIV.

14 Q. When you had a gynecological exam, were you examined
15 inside?

16 A. Yes.

17 Q. Did there come a point when you returned to your
18 apartment?

19 A. Yes, I came to my apartment.

20 Q. What happened when you came home?

21 A. The police were there. They took some things from my
22 daughter's -- some things, some things from the bed.

23 THE COURT: Sinks or things from the bed?

24 THE INTERPRETER: Yes, things.

25 Q. Could you describe what they took from your daughter's

1 bed?

2 A. Sheets.

3 THE INTERPRETER: She told already me before.

4 MS. CHANNAPATI: Can we approach for a second?

5 THE COURT: Come over here.

6 We're going to have a conference. So we're
7 going to let the witness step off the witness stand. All
8 right. The witness can step off the witness stand.

9 Tell her she's still under oath and do not
10 discuss anything. You will be outside in the hall. We'll
11 call you back, and the interpreter will be with you, but
12 don't discuss the case.

13 THE INTERPRETER: I have to come out here with
14 her?

15 THE COURT: You don't have to. You can get
16 her to the door and don't discuss the case.

17 (The following proceedings were held at
18 sidebar:)

19 THE COURT: Now, we're on the record in front
20 of the jury, but in a position where the jury cannot hear.

21 MS. CHANNAPATI: Your Honor, the interpreter
22 is having a little bit of a conference between the question
23 and the answers, and I'm asking that she be instructed on
24 the record outside the presence of the jury that she should
25 not be doing that.

1 MR. GREENBERG: I also object. It's my
2 understanding that she told the witness that, "Just tell
3 them it's the sheets."

4 We speak Russian.

5 THE COURT: Here's the thing. Your speaking
6 Russian is irrelevant. Under the law, it's irrelevant.

7 MR. GREENBERG: We know what she's saying.

8 THE COURT: Under the law, it's irrelevant,
9 because I don't know you speak Russian. This business of
10 interpreters will have to have a discussion out of the
11 presence of the jury, period.

12 MS. CHANNAPATI: Okay.

13 THE COURT: So we'll let the jury go for a
14 moment.

15 Ladies and gentlemen, there's some legal
16 issues that we need to discuss out of your presence. So,
17 therefore, you will go to your jury room. You will not
18 discuss the case and form no opinions, and we'll see you
19 back in a few minutes.

20 Leave your books on the seats. That's the way
21 we do that.

22 (Whereupon, the jury exits the courtroom.)

23 THE COURT: Let the record show that the jury
24 has exited the courtroom, but all parties are present. The
25 witness is outside of the courtroom. The interpreter is

1 present.

2 Now, at the conference, which we had which was
3 on the record, but the jury was not able to hear, the
4 People raised an issue, and the People's issue I should let
5 them put on the record themselves now.

6 MS. CHANNAPATI: Your Honor, I'm just a little
7 concerned with how the interpretation of the witness's
8 testimony is going. I'm sensing there's a discussion
9 between the two of them before an answer is given, and I
10 don't speak Russian, but I feel it's, like, I feel, like,
11 whatever is coming from the witness should be interpreted,
12 and if I need to ask another question, I'll ask another
13 question.

14 THE COURT: Now, that's what the People,
15 that's the thrust of what the People say. The defense also
16 had something to say.

17 MR. GREENBERG: Well, your Honor, it's my
18 understanding that the interpreter prompted and discussed
19 with the witness what item, or we'll say that was sheets,
20 obviously, that's inappropriate.

21 THE COURT: Now, defense is commenting with
22 regard to one particular event or piece of testimony. What
23 the People are raising is something a bit more general. So
24 let's try to take them separately.

25 The People's point is that they believe, and

1 let me say that I don't speak Russian, as the Court, and
2 let me say, secondly, if anybody else speaks Russian, as
3 far as I understand, the Court's decision here is that's
4 irrelevant, whether it was Russian, Spanish, or anything
5 else. That's why we have court interpreters.

6 Now, the business of what goes on between the
7 interpreter and the person on the stand, it's been
8 discussed over and over, and this is New York City, and
9 there's several languages.

10 So there are different styles, and this Court
11 has been observant. I have not observed anything that I
12 would call out of the ordinary, in general, period, and I
13 have put that on the record.

14 Now, with regard to the sheets, it was I who
15 said, what was that word. I was asking the interpreter
16 what is that word, and I didn't understand the first time
17 what the interpreter said.

18 Ultimately, the interpreter said, "things,"
19 t-h-i-n-g-s. I'm here with a computer, and I wrote it, and
20 I'm closer. "Things from the bed." That's what I took as
21 my note.

22 MR. GREENBERG: That's not --

23 THE COURT: I'm not asking you what you heard.
24 I'm saying what I heard.

25 MR. GREENBERG: That's not the specific item

1 that we were --

2 THE COURT: That's a different story.

3 MR. GREENBERG: It was when Ms. Channapati
4 stopped the examination just prior to that. That's where
5 it occurred.

6 THE COURT: Well, then I'm on a
7 different specific. Now, I move in a different direction.
8 If there is a point at which an interpreter is, and it has
9 to be observed by the Court, if there is a point at which
10 the interpreter is testifying, then we cannot allow that,
11 but the interpretation process is one where there is
12 latitude.

13 So, now, I instruct the interpreter, please,
14 listen to what the witness is saying. Please, do not, what
15 would I say, independently give us any words. Just give us
16 the words that the witness is saying.

17 If on the other hand the witness has said
18 something that you don't understand, then you can ask her
19 what you said.

20 THE INTERPRETER: Can I explain?

21 THE COURT: You may say something.

22 THE INTERPRETER: Okay. She was saying in
23 Russian, "Pododayalnik."

24 THE COURT: The reporter is giving me the eye.
25 He doesn't know how to spell that word.

1 There's a word in Russian that she said.

2 THE INTERPRETER: And this is like you have a
3 pillow case, and this is a cover, bed cover case, like you
4 put your cover in this case, but the Americans actually are
5 not using. So we are using, like, sheets.

6 THE COURT: The interpreter is saying in that
7 discussion which related to a bed and what's on the bed,
8 the interpreter is saying the witness was using language
9 that, if I'm understanding her correctly, in America, it's
10 not normally going to be found, the thing she was saying.

11 THE INTERPRETER: You could find, but maybe
12 seldom, but she knows the name, duvet.

13 MS. CHANNAPATI: Duvet is what the victim
14 said. It's a cover for a blanket.

15 THE COURT: That's an English word or a word
16 we understand.

17 Here, again, I repeat, having sat at 100
18 Centre Street where there are, I don't know how many
19 official interpreters, this comes up all the time, all the
20 time, but in a trial, we still have to have our proceeding,
21 and I say, once again, if it reaches the level where the
22 Court believes that the interpreter is testifying on her
23 own as opposed to interpreting, then the Court will stop
24 that, but we have had the discussion. We have had the
25 People raise their issue with regard to their witness, and

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1 we have had the defense raise what it observed, and so
2 we're all being more observant.

3 MS. CHANNAPATI: Thank you, your Honor. I
4 appreciate it.

5 THE COURT: I'll take a moment and be right
6 back.

7 (Brief recess taken.)

8 THE COURT: The Court notes that the witness
9 has returned to the witness stand.

10 Ms. Interpreter.

11 THE INTERPRETER: Yes.

12 THE COURT: The Court notes that the witness
13 has returned to the witness stand. She may sit. She is
14 still under oath.

15 Now, well ask the jury to return.

16 THE COURT OFFICER: Ready for the jury, your
17 Honor?

18 THE COURT: Yes.

19 THE COURT OFFICER: Jury entering.

20 (Whereupon, the jury enters the courtroom and
21 is properly seated.)

22 THE CLERK: All jurors are present. Do both
23 sides waive the reading of the roll?

24 MR. GREENBERG: So waived.

25 MS. CHANNAPATI: So waived.

1 THE COURT: Ladies and gentlemen, we are back,
2 and we will continue.

3 People.

4 Q. Ms. Krioutchkova, when you came back to your
5 apartment, did you notice if anything was missing?

6 A. Nothing was missing, except the duvet the police took.

7 Q. Could you explain what a duvet is?

8 A. In Russian this is Pododayalnik.

9 THE COURT: It is what in Russian?

10 THE INTERPRETER: Pododayalnik. This is the
11 name.

12 THE WITNESS: This is two sheets.

13 THE COURT: Two sheets.

14 THE WITNESS: Sewn together.

15 THE COURT: Two sheets sewn together.

16 THE WITNESS: Inside you put the blanket.

17 THE COURT: Inside you put a blanket.

18 Q. Did you notice anything else when you came home?

19 A. Like, concrete.

20 Q. Did you check your messages? When you came home, did
21 you check your messages when you came home?

22 A. Yes, I checked.

23 Q. Did you have any messages when you came home?

24 A. Yes. There was one message, and it was Dennis Colon's
25 voice, and he was saying, "Sorry."

1 Q. Now, I'm going to direct your attention to April 5th,
2 2003, approximately after midnight. Did you receive a phone
3 call at that time?

4 A. Yes, I received.

5 Q. Did you recognize the caller?

6 A. Yes, I recognize. This was the voice of Dennis
7 Colon's.

8 Q. What did he say to you?

9 A. He asked, "Do you remember what happened?"

10 And I'm asking, "Who is calling? Who is this?"

11 He answered, "You know who is calling."

12 I start saying, "I don't know who are you."

13 He's saying and was asking the same many times, "Do
14 you remember what happened? Did you call the police?"

15 I was saying, "No. I didn't call to the police," and
16 after, my daughter, she heard me talking on the phone. She
17 came out, and she was showing with her gesture, with her head,
18 who is this, and I was showing to her to the receiver, and I
19 was gesturing to her, like, it's him; and prior to this, the
20 detective told my daughter, If someone will call, right away
21 they have to call to the police, and the detective was
22 instructing, she says, "You have to pick up the telephone," and
23 my daughter right away, she called to the detective. I was
24 feeling not well, and I didn't want to talk to him, and my
25 daughter was telling me, "Hold him on the line as long as it's

1 possible."

2 Q. How did your daughter call?

3 A. She got a cellular telephone, and she was using her
4 cellular telephone.

5 Q. What else did Dennis Colon say?

6 A. After my daughter was telling me, "Hold him on the
7 line," I got very nervous, because I didn't want to talk to
8 him, and after we were talking like a question, answer,
9 question, answer; and I asked him, I asked him, "Why you did
10 this?"

11 He was laughing, and he was saying, "I love your
12 body," and I was telling him, "I was afraid, I was afraid you
13 will kill me," and he asked me, "Do you like my body?"

14 I told him, "I didn't see your body. You didn't took
15 off your clothes."

16 He was laughing. He was saying, "not this body," and
17 after I asked him how he got my name, my telephone number, and
18 he was saying, "In the telephone book," and I asked, "Which
19 telephone book, in Russian telephone book?"

20 And he was laughing, and I asked him also, "What is
21 your name? You know everything about me."

22 He was saying, "My name is Jack, and I asked him,
23 "You're black or Spanish?"

24 I don't remember what he was answering. Spanish, he
25 was answering, and after I was saying, "Jack is not a Spanish

1 name." I was talking just to talk, and he was also laughing.

2 Q. What else did you say to him, if anything?

3 A. I don't remember what else. We were talking, we were
4 talking about everything, and after, he's asking, "What are you
5 doing? How you dressed up? Are you wearing the same gown?"

6 Q. Who asked that question?

7 A. Colon was asking me, "Where are you now? How you are
8 laying?"

9 And after, my daughter came out from the other room,
10 and she was telling me, "Invite him here. Invite him."

11 I was saying -- he was saying, "I would like to see
12 you."

13 So I was telling him, "Come in now," and he was asking
14 me, "Are you by yourself?"

15 I was saying, "No, my son is with me in the
16 apartment."

17 Q. Ms. Krioutchkova, was your son with you at that time?

18 A. No, he wasn't. I was afraid when he will come. I was
19 afraid he will come. Maybe my son can stop him, and he will
20 defend me.

21 After, he was laughing. He was saying, "No. No."
22 And after, he was saying, "I will be there in half an hour,"
23 and after a pause and something else we were talking about, but
24 I cannot recall now. "No. No. I'm not coming now. I'll come
25 next time."

1 Q. Then what happened?

2 A. He was the one who put the receiver.

3 Q. After you got off the phone with him, what happened
4 next?

5 A. Very quick, two detectives arrived.

6 Q. Did the police stay at your apartment?

7 A. They were staying in my apartment, talking among
8 themselves.

9 Q. For how long did they stay?

10 A. I cannot say how long they were in the apartment.
11 They were staying in the apartment, but how long, I couldn't
12 say.

13 Q. I'm going to direct your attention to later that day
14 into the evening at 9:00 o'clock p.m. Did there come a point
15 where you went to the Brooklyn Special Victims Squad building,
16 Brooklyn Special Victims Squad building?

17 A. Yes.

18 Q. What did you do when you got there?

19 A. When I came over, there this was room with a huge
20 window, and a policeman came to me and was saying, Look in the
21 window, and if you will see someone familiar, you tell us.

22 Q. Did you recognize anyone?

23 A. I recognized a man. It was Dennis Colon.

24 Q. What number was he?

25 A. No. 5.

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1 Q. Where did you recognize him from?

2 A. I recognized his face very well, but his beard was a
3 different style. He got the beard thin, but it started under
4 the chin from one side and was going on the upper lip near the
5 nose, and it end up on the other side of the chin.

6 Q. Ms. Krioutchkova, from where did you recognize Dennis
7 Colon from?

8 A. I identified him, because he came to my apartment, and
9 he raped me.

10 Q. Did you tell the detective this or the police officer
11 this that was with you?

12 A. I told him I recognized this man, and I pointed to the
13 number.

14 Q. Now, did a detective show you any property that day?

15 A. We went to another room, and she brought a hat and the
16 knife.

17 Q. Did you recognize the hat and the knife?

18 A. Yes, I recognized.

19 Q. Where did you recognize them from?

20 A. The hat was Dennis Colon was wearing, the hat when he
21 came to my apartment, and the knife was in his hand.

22 MS. CHANNAPATI: Your Honor, at this time, if
23 the witness could be shown what's been previously marked as
24 People's No. 1 for identification.

25 THE COURT: Yes. The witness will be shown

1 that. It's been shown to the defense and has been marked,
2 previously, for identification, People's Exhibit 1.

3 Q. Ms. Krioutchkova, do you recognize that?

4 A. I recognize this.

5 Q. What do you recognize it to be?

6 A. This is the draft of my apartment.

7 Q. It is what?

8 A. Draft.

9 Q. Is it drawn to scale?

10 A. No scale.

11 THE INTERPRETER: Say it again.

12 Q. Is the drawing drawn to scale?

13 THE COURT: She may not understand what you
14 mean, People.

15 Q. Ms. Krioutchkova, is the drawing directly
16 proportionate --

17 A. I understand.

18 THE COURT: At this time the question is not
19 finished. So let's finish the question and then interpret.

20 Q. Is the drawing directly proportionate to the
21 measurements of your actual apartment?

22 A. It looks like this is my apartment, and everything is
23 here like it was in my apartment, but about the measurements,
24 it's not the same.

25 Q. Other than that, does it fairly and accurately depict

1 your apartment?

2 A. Yes, this is my apartment.

3 MS. CHANNAPATI: Your Honor, at this time I
4 ask what has been previously marked as People's No. 1 for
5 identification be moved into evidence as People's No. 1 in
6 evidence.

7 THE COURT: Is there any objection?

8 MR. GREENBERG: No.

9 THE COURT: All right. Then that item is
10 admitted into evidence as People's Exhibit 1.

11 MS. CHANNAPATI: Could it be posted for the
12 jury?

13 THE COURT: It may be posted.

14 MS. CHANNAPATI: Your Honor, I would ask if
15 the witness could be handed this marker.

16 THE COURT: You may ask the court officer once
17 he gets everything else set up to approach the witness.

18 MS. CHANNAPATI: With the Court's permission,
19 may the witness approach the exhibit?

20 THE COURT: Now, the witness may step towards
21 the exhibit.

22 Q. Ms. Krioutchkova, could you please point first where
23 the entrance to your apartment is.

24 A. This is the corridor, and this is my door.

25 Q. Could you please put the letter "D" for door to the

1 entrance of your apartment.

2 A. (Witness complies.)

3 Q. Could you please point as to where the bathroom is
4 located in your apartment, just point, and could you put a
5 letter "B" there, please. Could you please just point and
6 indicate where you sleep in the apartment.

7 A. (Witness complies.)

8 Q. Ms. Krioutchkova, what kind of bed is that?

9 A. Sofa bed.

10 Q. Could you please put a "V" for Vera as to where you
11 sleep.

12 A. (Witness complies.)

13 Q. Now, could you please indicate where your daughter
14 sleeps, just point, and is that the same bed that Dennis Colon
15 attacked you on?

16 MR. GREENBERG: Objection.

17 THE COURT: Sustained as to the form of the
18 question.

19 Q. Is that the same bed where Dennis Colon --

20 THE COURT: Where the event occurred. Is that
21 what you're saying?

22 Q. Where the event occurred?

23 A. Yes.

24 Q. Could you put an "X" on that.

25 A. (Witness complies.)

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1 Q. What kind of bed is that?

2 A. Sofa bed.

3 Q. Thank you. You could have a seat.

4 Ms. Krioutchkova, on the day that this happened, on
5 March 26th, 2003, the sofa bed where this all occurred, was it
6 open, or was it closed?

7 A. It was open.

8 MS. CHANNAPATI: Your Honor, at this time I
9 would like if the witness could be shown what's been
10 previously marked and shown to defendant's counsel as
11 People's No. 2 for identification.

12 THE COURT: All right. It has been previously
13 marked for identification, People's 2. The defense has
14 seen it.

15 Is that correct?

16 MR. GREENBERG: Correct.

17 MS. CHANNAPATI: Yes, your Honor.

18 THE COURT: So, it's now being shown to the
19 witnesses.

20 MS. CHANNAPATI: Your Honor, I'm just going to
21 stand closer.

22 THE COURT: You may approach.

23 MS. CHANNAPATI: Thank you.

24 Q. Ms. Krioutchkova, do you recognize these five photos?

25 A. I recognize.

1 Q. What do you recognize them to be?

2 A. Which picture?

3 Q. Well, just start with the first one, start with 2-A.

4 A. This is the view from outside on the street. This is
5 the entrance door. On the right side, this is my window on the
6 first floor.

7 Q. It is the entrance to what?

8 A. This is the entrance from the street to the corridor
9 on the ground floor.

10 Q. Of what building?

11 A. The building, my building where I used to reside.

12 Q. Now, looking at Photo 2-B, could you please describe
13 what that is?

14 A. This is the door, the second door, from in the
15 building where I lived on the first floor.

16 Q. Could you please describe what's in Photo 2-C.

17 A. On this picture I see my door from the right side.

18 Q. Could you please describe what you see in Photo 2-D?

19 A. On D this is the door, the exit door, from my
20 building, and my door is on the left side.

21 Q. What is in Photo 2-E?

22 A. This is the entrance door to my apartment.

23 MS. CHANNAPATI: Your Honor, at this time I
24 would ask -- I'm sorry. One more question.

25 Q. Do these photos fairly and accurately depict what your

1 apartment looked like, the entrance to your apartment, the
2 corridor before your apartment door, does it fairly and
3 accurately depict the way it looked on March 26th, 2003?

4 A. Yes, exactly.

5 MS. CHANNAPATI: Your Honor, at this time I
6 would ask what's been previously marked as People No. 2-B
7 be offered into evidence as People's No. 2 in evidence.

8 THE COURT: Any objection?

9 MR. GREENBERG: No.

10 THE COURT: That is now placed in evidence or
11 admitted into evidence as People's 2.

12 MS. CHANNAPATI: Your Honor, could we post it
13 for the jury, please?

14 THE COURT: It will be posted.

15 MS. CHANNAPATI: If the witness could be
16 allowed to approach the exhibit.

17 THE COURT: All right. It has been posted.
18 The witness may, again, approach with the exhibit.

19 People.

20 MS. CHANNAPATI: Yes, thank you.

21 Q. Vera, could you point to the photo that depicts the
22 entrance to your building?

23 A. (Indicating.)

24 Q. In that photo is your apartment window also shown?

25 A. This one.

1 Q. Now, that entrance door, did the lock on that door --
2 well, withdrawn.

3 Was there a lock on that door?

4 A. The lock was there, but didn't work.

5 Q. Now, directing your attention to Photo 2-B, was there
6 a lock on that door?

7 A. The lock was there, but didn't work.

8 Q. Directing your attention to Photo 2-C, could you
9 please point to where your apartment door is?

10 A. (Indicating.) Okay.

11 Q. If you could put a "V" on the door.

12 A. (Witness complies.)

13 Q. Photo 2-D, indicate, if it's shown, where your
14 apartment door is?

15 A. (Indicating.)

16 Q. What is shown in Photo 2-E?

17 A. This is the door of my apartment.

18 Q. Just going back to Photo 2-B, what door is shown in
19 that photo?

20 A. This is the entrance door between the first corridor
21 and the second corridor.

22 MS. CHANNAPATI: Your Honor, the witness can
23 sit down.

24 THE COURT: The witness may now get back to
25 the seat.

1 This might be a good time to break.

2 MS. CHANNAPATI: Okay.

3 THE COURT: So, it is a good time to break for
4 lunch. Again, my same instruction, I must repeat them each
5 time. Do not discuss the case, and we'll see you back at
6 2:15. Please leave your books on the seat. That's the way
7 we keep them.

8 (Whereupon, the jury exits the courtroom.)

9 THE COURT: Now, the jury has left the
10 courtroom. The witness will also now be leaving from the
11 witness stand to return at 2:15. The witness is instructed
12 to have no discussions with the People during the lunch
13 break, and we'll see you back at 2:15.

14 THE COURT: Thank you.

15 The witness may step down.

16 THE COURT: The record will show that the
17 witness has now left the courtroom.

18 Do either of the attorneys have anything to
19 discuss at this point?

20 MR. GREENBERG: Not at this time.

21 THE COURT: They do not. So we'll be back at
22 2:15.

23 (Luncheon recess taken.)
24
25

1 THE COURT: All right. The witness has taken
2 the stand. We have been informed that the jury is ready.
3 We can let the jury in.

4 THE COURT OFFICER: Jury entering.

5 (Whereupon, the jury enters the courtroom and
6 is properly seated.)

7 THE CLERK: All jurors are present.

8 Do both sides waive the reading of the roll?

9 MR. GREENBERG: So waived.

10 MS. CHANNAPATI: So waived.

11 THE COURT: Ladies and gentlemen of the jury,
12 we're back after lunch. We're back right where we left
13 off.

14 People, you may proceed.

15 MS. CHANNAPATI: Thank you, your Honor.

16 At this time I would ask that if the witness
17 could be shown what's been previously marked and shown to
18 defense counsel as People's No. 3 for identification.

19 THE COURT: Defense, you have seen that?

20 MR. GREENBERG: Yes.

21 THE COURT: That is being handed to the
22 witness.

23 Q. Ms. Krioutchkova, do you recognize that? Do you
24 recognize those photos?

25 A. Yes, I recognize.

1 Q. What do you recognize those photos to be generally?

2 A. This is my apartment.

3 Q. Do those photos fairly and accurately depict what your
4 apartment looked like on March 26th, 2003?

5 A. Yes.

6 MS. CHANNAPATI: Your Honor, at this time I
7 would ask what's been previously marked as People's No. 3
8 for identification be moved into evidence as People's No.
9 3 in evidence.

10 THE COURT: Any objection?

11 MR. GREENBERG: No.

12 THE COURT: Into evidence as People's 3.

13 MS. CHANNAPATI: If it could be posted for the
14 jury to see.

15 THE COURT: Again, it will be posted by the
16 court officer.

17 MS. CHANNAPATI: With the Court's permission,
18 could the victim approach the exhibit?

19 THE COURT: One at a time. Let him post it.

20 All right. Now, the witness may get up and
21 approach.

22 People, you must use the word, "complaining
23 witness."

24 MS. CHANNAPATI: I apologize. Complainant,
25 okay.

1 Q. Ms. Krioutchkova, could you please look at Photo A.
2 Could you describe what is in that photo.

3 A. The kitchen, this is the door, the entrance to the
4 bathroom, and this is the piece of door, this is the entrance
5 door to the apartment.

6 Q. Now, looking at Photo B, could you please describe
7 what is in that photo?

8 A. This is the door which is going to the bathroom.

9 Q. In that photo, is the leak in your bathroom depicted
10 in that photo?

11 A. Yes. This part was leaking and down.

12 Q. Could you circle the places where it was leaking.

13 A. (Witness complies.)

14 Q. Now, looking at Photo C, could you please describe
15 what's in that photo?

16 A. This is the bathtub.

17 Q. Is there a leak depicted in that photo?

18 A. Yes.

19 Q. Could you please point first where that leak is?

20 A. This part.

21 Q. Could you circle that, please, with your marker. Now,
22 looking at Photo D, could you please describe what is in that
23 photo.

24 A. This is the door between the rooms, the kitchen and
25 the other room.

1 Q. Could you describe what's in Photo E?

2 A. This is the kitchen, and this is my sofa bed where I
3 was sleeping, and this is the table which he was writing, and
4 this is the faucet where the leak was.

5 Q. Could you circle that, and could you put a "V" where
6 that indicates where your bed is.

7 A. (Witness complies.)

8 Q. Could you please describe what's in Photo F.

9 A. This is the entrance door. It is the kitchen, and
10 where he washed his hands, and you cannot see, but over there,
11 the door to the bathroom.

12 Q. Now, directing your attention to Photo G, could you
13 please describe that.

14 A. This is the table where he was writing with his pen.
15 This is the door between the rooms from the kitchen to the
16 room.

17 Q. Could you please describe what's in Photo H?

18 A. I'm calling this kitchen. This is my bed, and this is
19 the table which he was writing on, and this was the pen.

20 Q. Is the pen depicted in the photo?

21 A. Yes, here.

22 Q. Thank you very much. You can have a seat?

23 MS. CHANNAPATI: Your Honor, at this time I
24 would ask what's been previously marked as People's No. 4
25 for identification and shown to defense counsel, if it

1 could be shown to the witness.

2 THE COURT: That has been marked previously.

3 The defense has seen it. It's now being shown to the
4 witness, People's 4 for identification.

5 Q. Ms. Krioutchkova, do you recognize that?

6 A. Yes, I recognize.

7 Q. What do you recognize them to be?

8 A. This is the room in my apartment where my daughter and
9 my granddaughter were sleeping.

10 Q. Do these photos, do they fairly and accurately
11 depict --

12 A. Yes.

13 Q. -- what your apartment looked like on March 26th,
14 2003?

15 A. Yes.

16 MS. CHANNAPATI: Your Honor, at this time I
17 would ask that they be moved into evidence?

18 THE COURT: Any objection?

19 MR. GREENBERG: No.

20 THE COURT: Into evidence without objection as
21 People's 4.

22 MS. CHANNAPATI: Thank you.

23 If it could be posted for the jury.

24 THE COURT: Again, the court officer will do
25 that.

1 MS. CHANNAPATI: With the Court's permission,
2 if the witness could --

3 THE COURT: Again, the witness may approach
4 the exhibit.

5 Q. Looking at Photo A, could you please describe what's
6 in that photo.

7 A. This is the place where my granddaughter was sleeping.
8 This is the place where my daughter was sleeping.

9 Q. The place where your daughter was sleeping, is that
10 the place where you had the incident with Mr. Colon, the
11 defendant?

12 A. Yes, this place.

13 Q. Could you put an "X" at that place?

14 A. (Witness complies.)

15 Q. Looking at Photo B, what is that?

16 A. This is the place where my daughter was sleeping, and
17 this is the place where my granddaughter was sleeping.

18 Q. Could you please indicate, if it's depicted in that
19 photo, where you had the incident with the defendant?

20 THE INTERPRETER: Repeat it.

21 Q. If you could please, if it's depicted in that photo,
22 please indicate with a letter "X" where you had the incident
23 with the defendant?

24 A. (Witness complies.)

25 Q. Could you please describe what's in Photo C?

1 A. This is the place where my daughter was sleeping, and
2 this door is to the kitchen.

3 Q. And in Photo D.

4 A. This is the desk where my daughter was studying, and
5 this is our computer.

6 Q. What is in Photo E?

7 A. This is the place where my granddaughter was sleeping.

8 Q. What kind of bed is that?

9 THE INTERPRETER: In Russian, this is a chair
10 bed.

11 THE COURT: A what, chair bed?

12 The interpretation is a chair bed.

13 Q. In Photo F, could you describe what that is?

14 A. This is the place where my daughter was sleeping.

15 Q. Could you please indicate with an "X" where you had
16 the incident with the Defendant Colon?

17 A. (Indicating.)

18 MS. CHANNAPATI: Thank you very much. You can
19 have a seat.

20 Your Honor, at this time I ask if this can be
21 marked as People's No. 5 for identification.

22 THE COURT: What is that?

23 THE WITNESS: It's the duvet, your Honor.

24 THE COURT: It's the duvet. Very good. Let's
25 see what it looks like. I don't know what it looks like.

1 Let defendant's counsel see it.

2 MS. CHANNAPATI: Your Honor, I would ask if
3 this could be shown to the witness.

4 THE COURT: You may show it.

5 It has not been premarked?

6 MS. CHANNAPATI: No, it has not.

7 THE COURT: All right. It will be shown to
8 the witness.

9 MS. CHANNAPATI: And if it could be marked for
10 identification.

11 THE COURT: It will be marked as what, People?

12 MS. CHANNAPATI: People's No. 5 for
13 identification.

14 THE COURT: It will be marked as People's No.
15 5 for identification.

16 Q. Ms. Krioutchkova, do you recognize that?

17 A. I recognize it.

18 Q. What do you recognize it to be?

19 A. This is the --

20 Q. Is it the duvet that was on --

21 A. Yes.

22 Q. The duvet, is it in the same or substantially the same
23 condition as it was on March 26th, 2003?

24 A. I only was seeing a portion.

25 MS. CHANNAPATI: Your Honor, could it be --

1 THE COURT: Well, if the court officer can
2 take it out.

3 There cannot be discussion off the record.

4 THE WITNESS: I don't understand the word
5 "condition."

6 THE COURT: She doesn't understand the word,
7 "condition."

8 Explain the word, "condition."

9 The word, "condition" -- I'll explain it.
10 Condition means the state it was in.

11 Is that the same state as it was that day?

12 THE WITNESS: Yes, in the same state.

13 THE COURT: She says, yes, it's in the same
14 state.

15 The court officer is struggling to get it out
16 of the bag, and she sees it, and she says, "Yes."

17 MS. CHANNAPATI: Your Honor, at this time I
18 would ask what's been previously marked as People's No. 5
19 for identification be received and marked into evidence as
20 People's 5 in evidence.

21 THE COURT: Any objection?

22 MR. GREENBERG: Yes, at this time, subject to
23 connection.

24 MS. CHANNAPATI: Subject to connection.

25 THE COURT: Yes, subject to connection.

1 MS. CHANNAPATI: Thank you very much.

2 Q. Ms. Krioutchkova, you saw what's been marked as
3 People's No. 5 in evidence; correct?

4 A. Yes.

5 Q. How do you recognize that?

6 A. I was buying. I know the price.

7 Q. Where was that duvet on March 26th, 2003?

8 A. This was outside of the blanket where my daughter was
9 sleeping.

10 Q. What happened on that duvet?

11 A. On this duvet Dennis Colon raped me.

12 MS. CHANNAPATI: Okay. Thank you.

13 Your Honor, at this time I ask if this robe
14 could be marked for identification.

15 THE COURT: Again, has the defense counsel
16 seen it?

17 MS. CHANNAPATI: I'm showing it to defense
18 counsel.

19 THE COURT: It's being premarked as No. 6 for
20 identification. It's being shown to the witness.

21 Q. Ms. Krioutchkova, do you recognize that?

22 A. Yes.

23 Q. What do you recognize that to be?

24 A. This is my gown which I loved.

25 Q. Which?

1 A. Loved, but not now, I loved.

2 Q. Loved. Okay.

3 Where do you recognize it from?

4 A. This is my gown. I was buying, and I was wearing.

5 Q. When were you wearing it last?

6 A. March 26th, 2003.

7 Q. As you look at it today, is it in the same or
8 substantially same condition or state as it was on that date?

9 A. Yes, in the same condition.

10 MS. CHANNAPATI: Your Honor, at this time I
11 ask that People's No. 6 be received into evidence.

12 THE COURT: Any objection?

13 MR. GREENBERG: Yes, subject to connection,
14 custody.

15 THE COURT: Again, into evidence subject to
16 connection, custody.

17 MS. CHANNAPATI: If it could be taken out of
18 the bag and shown to the witness.

19 Q. Ms. Krioutchkova, was that what you were wearing when
20 Dennis Colon came to your apartment?

21 A. Yes.

22 Q. Did you have anything else on?

23 A. No, I didn't have.

24 Q. Why were you wearing only this robe?

25 A. I came out from the bathtub, and I was wearing this,

1 and I was wearing always when I'm in my apartment.

2 Q. When did you get the phone call from Dennis Colon?

3 A. In the morning.

4 Q. Was it after you were taking your shower?

5 A. After.

6 Q. How soon after was it when you took your shower?

7 A. Maybe half an hour.

8 Q. Where were you going before Dennis Colon called?

9 A. I was going to see my doctor by appointment.

10 MR. GREENBERG: Your Honor, can I have the
11 court officer bring the robe over?

12 THE COURT: The defense would like to see the
13 robe. It's being observed by the defense and the People.
14 It's been exhibited to the defense.

15 MS. CHANNAPATI: At this time I ask that the
16 following three photos be marked as People's No. 7-A, B,
17 and C for identification. I'm showing them to the defense
18 attorney.

19 THE COURT: It's being shown to the defense.
20 The People are asking that it be marked People's
21 Exhibit 7-A, B, and C for identification.

22 Q. Vera, do you recognize that?

23 A. Yes.

24 Q. What do you recognize them to be?

25 A. I recognize the hat, and I recognize the knife.

1 Q. Where do you recognize them from?

2 A. I saw.

3 Q. Where did you see them?

4 A. Dennis Colon was wearing this hat when he came in, and
5 this knife I saw in his hands, and this part, this part was
6 covered with his hand.

7 Q. When you say "this part," what part do you mean?

8 THE INTERPRETER: Now I have a problem.

9 THE COURT: What did she say?

10 THE INTERPRETER: She has, I have a problem,
11 like, you have the handle, and you have the part which is
12 the --

13 THE COURT: What did the witness say? She was
14 saying --

15 THE INTERPRETER: I don't know the
16 interpretation of this word. I forgot.

17 Q. Is it the blade?

18 A. The blade, yes.

19 THE COURT: She said, "the blade."

20 THE INTERPRETER: Sorry.

21 Q. Now, what part of that knife do you recognize?

22 A. I recognize the blade and a small piece here.

23 Q. When you say "a small piece here," what do you mean?

24 A. His hand was covering a portion of the knife, and I
25 saw the blade and this part.

1 Q. Is that part of the handle?

2 A. Yes.

3 MS. CHANNAPATI: I would ask what's been
4 previously marked as People's No. 7-A and B for
5 identification be moved into evidence.

6 THE COURT: Well, you said --

7 MS. CHANNAPATI: Excuse me. 7-A, B, and C.

8 THE COURT: Any objection?

9 MR. GREENBERG: No.

10 Yes, Judge. Can I voir dire?

11 THE COURT: Yes, you may.

12 VOIR DIRE

13 BY MR. GREENBERG:

14 Q. Are you able to identify the handle of that knife?

15 A. Yes.

16 Q. The handle, the designs?

17 A. A portion of the handle.

18 Q. Which portion?

19 A. Between the blade and this part.

20 THE COURT: We have to know what "this part"
21 means.

22 The witness can say what she's seeing on the
23 photograph.

24 What does she mean by, "this part"?

25 THE WITNESS: I can identify the blade and

SCHEDULE FOR S.T.A.R.

The following schedule is for all S.T.A.R. participants. You are required to attend all six session. Sessions begin at 9:30AM and end at 12:30PM. **BE ON TIME!** Late comers will not be allowed into the session and will have to repeat the cycle the next time it is offered. Please note that Session 5 is on a Thursday, not a Tuesday. If you have a court appearance scheduled for any of these days, you must come to the session first and you will be provided a letter for court as to why you are appearing in the afternoon.

- 1) Tuesday, June 22, 2010 at 9:30 a.m.**
- 2) Tuesday, June 29, 2010 at 9:30 a.m.**
- 3) Tuesday, July 6, 2010 at 9:30 a.m.**
- 4) Tuesday, July 13, 2010 at 9:30 a.m.**
- 5) Thursday, July 22, 2010 at 9:30 a.m.**
- 6) Tuesday, July 27, 2010 at 9:30 a.m.**

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1 portion of the handle, the one which wasn't covered by his
2 hand.

3 Q. Can you identify the handle of that blade, of that
4 knife?

5 MS. CHANNAPATI: Objection, your Honor.
6 Asked and answered.

7 THE COURT: It is asked and answered, Counsel,
8 and she has given you an answer.

9 MR. GREENBERG: Your Honor, I'm going to
10 object to the introduction of the photographs.

11 THE COURT: On what grounds?

12 MR. GREENBERG: She can't identify that that
13 is the knife, the particular knife. She can identify that
14 that blade -- that it's a blade and the handle. She cannot
15 identify the specific designs.

16 THE COURT: I think if we're going to have an
17 argument about that, we're going to let the jury out of the
18 room. The jury can now go to the jury room.

19 Leave your books, and I'll have this
20 discussion out of your presence.

21 (Whereupon, the jury exits the courtroom.)

22 THE COURT: Also, the witness needs to now
23 step down. Please, do not discuss the case or any other
24 matters with the People, and you will be in the hall.

25 (Whereupon, the witness exits the courtroom.)

1 THE COURT: Let record show that the jury
2 exited first, and now the witness has exited.

3 Beginning with the discussion regarding
4 whether the photographs are to be admitted, you might as
5 well let me see them.

6 The defense had conducted it's voir dire, and
7 the defense had asked certain questions, and then at the
8 end of that, the defense objected, and so now you can
9 continue, defense.

10 MR. GREENBERG: Your Honor, the witness cannot
11 positively identify that entire knife. There certainly is
12 better evidence than that, which would be the knife itself,
13 No. 1, which I understand is not here.

14 Secondly, she can only identify the bottom
15 portion of it, and the blade. Certainly, there are
16 numerous types of knives out there that would have similar
17 blades, similar bottoms of handles.

18 I believe that the design on the handle is
19 rather unique, and I don't believe that she has identified
20 that as the knife that was used, according to her
21 testimony, used in the attack.

22 THE COURT: People.

23 MS. CHANNAPATI: It goes to the weight, not
24 the admissibility. She says she recognized it. She says
25 how she recognizes it. The rest is up for argument, but as

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1 far as the admissibility of the knife, she says she
2 recognizes it, and she's somehow recognized it. It's not
3 the way the defendant's attorney might have recognized it.

4 She recognizes that knife.

5 MR. GREENBERG: It's not how I recognize it
6 It's how the witness identifies it.

7 THE COURT: I agree that the defense counsel
8 doesn't have to recognize it.

9 The Court is looking at 3 photographs. One of
10 these photographs, it says 7-C, as in Charley, is of a cap,
11 a black cap. I think it's called a watchman's cap, but
12 it's a black cap, and we're not talking about it.

13 MR. GREENBERG: I have no objection to 7-C.

14 THE COURT: The other two photographs which
15 are marked on the back A, as in Adam, and B, as in boy,
16 depict a knife, and they are color photographs, and they
17 are of a pocket knife with the blade extended, and in both
18 photographs the knife is on some sort of plain mat colored
19 medium, and the knife is above a wooden ruler, and the
20 wooden ruler has inch marks; and so looking at the wooden
21 ruler, it appears that the knife is approximately seven and
22 a half inches long, extended in that fashion, and 7-A, the
23 blade is pointed to the left, and in 7-B, the blade is
24 pointed to the right.

25 In each case one can see that there is,

1 indeed, a distinctive design on the handle of this knife.
2 It's a pocket knife, and that design appears to be an
3 alligator or something like that, and that design covers,
4 well, it's as if in the part where the blade swings out,
5 that's in the metal, and, of course, the blade would come
6 back inside of that. So that's metal, and it doesn't have
7 that particular design at the end of the knife.

8 In other words, the alligator, presuming
9 that's what it is, is on a black surface, and the alligator
10 is silver or metal covering behind that, in other words,
11 the end of that black medium on which the alligator is
12 placed, there's another portion which is silver or silver
13 colored, which is approximately the same size as that front
14 portion where the knife would fold back, and that appears
15 to have some sort of design on it as well in the back.

16 Now, I said all that just to let us know
17 what's on the photographs. The question is whether these
18 photographs can be admitted in view of the objection of the
19 defense, and the Court rules that these photographs, and
20 the defense is objecting to the knife, not the hat, they
21 may be admitted.

22 The Court agrees with the People's argument.

23 Now, we can get the witness back first, and
24 then the jury.

25 (Whereupon, the witness resumes the stand.)

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1 THE COURT: The witness has taken the stand.
2 The interpreter is next to the witness. Please advise the
3 witness, Ms. Interpreter, that she's still under oath.

4 No cross talk. I agree. The interpreter held
5 up her hand as the witness was saying something. There's
6 no cross talking. It must be on the record.

7 THE COURT OFFICER: Ready for the jury?

8 THE COURT: Yes, we are. Thank you.

9 THE COURT OFFICER: Jury entering.

10 (Whereupon, the jury enters the courtroom and
11 is properly seated.)

12 THE COURT: Both parties acknowledge the
13 presence of all the jurors?

14 MS. CHANNAPATI: So waived.

15 MR. GREENBERG: So waived.

16 THE COURT: We're back. We had the
17 discussion. The Court rules that those photographs are
18 into evidence as People's Exhibit 7-A, B, and C.

19 Go ahead.

20 MS. CHANNAPATI: May I approach the witness?

21 THE COURT: Yes, People.

22 MS. CHANNAPATI: Let the record reflect that
23 I'm holding Photo 7-B in my hand.

24 THE COURT: Go ahead. You're holding up the
25 photograph.

1 DIRECT EXAMINATION (Resumed.)

2 BY MS. CHANNAPATI:

3 Q. What particular portion of the handle of the knife do
4 you recognize?

5 THE COURT: Let the record show that the
6 witness has taken up a ballpoint pen and pointed on the
7 photograph.

8 MS. CHANNAPATI: And has pointed to the
9 base --

10 THE COURT: Well, the witness has to say that.
11 You can't say what she pointed to.

12 Q. What part did you point to?

13 A. The end of the design, and this part, this part has
14 white color. I remember this.

15 Q. Were you able -- where did you first see this knife?

16 A. I saw in Dennis Colon's hands.

17 Q. What was the defendant doing with the knife?

18 A. He made a move like he will hit me.

19 MS. CHANNAPATI: With the Court's permission,
20 could the witness stand up and demonstrate, your Honor?

21 THE COURT: The witness may stand up.

22 THE WITNESS: He was in the --

23 THE COURT: Let the record show that the
24 witness has stood up. She's holding her right hand up.
25 Her fist is balled up.

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1 Go ahead.

2 THE WITNESS: He make this move, and he was
3 saying, "I'll kill you. I'll kill you."

4 THE COURT: Let the record show that the
5 witness had her hand up and made those oral statements and
6 put her hand down in downward motions.

7 MS. CHANNAPATI: Thank you, your Honor.

8 At this time, your Honor, I would ask that
9 this CD be pre-marked as People's -- I'm sorry, your Honor.
10 Withdrawn.

11 THE COURT: Withdrawn.

12 Q. Directing witness to look at Photo 7-A.

13 THE COURT: Photograph 7-A?

14 MS. CHANNAPATI: 7-C.

15 THE COURT: What are you asking her to look
16 at?

17 MS. CHANNAPATI: 7-C.

18 THE COURT: 7-C, as in Charley.

19 Q. What is that?

20 A. This is a cap which Dennis Colon was wearing.

21 Q. And when did you first see that cap?

22 A. On his head on March 26th.

23 Q. Did he have that hat on his head the entire time?

24 A. Yes.

25 MS. CHANNAPATI: Now, I would ask if this

1 could be premarked as People's No. 8?

2 THE COURT: What is it again, People?

3 MS. CHANNAPATI: It's a CD.

4 THE COURT: The People have a CD, and you're
5 asking that it be marked as what?

6 MS. CHANNAPATI: People's 8.

7 If it could be shown to the witness.

8 THE COURT: Yes.

9 This is being shown.

10 Q. Vera, do you recognize that CD?

11 A. Yes.

12 Q. How do you recognize it?

13 A. I recognize it, because I saw it today.

14 Q. When was the last time you listened to that CD?

15 A. Today.

16 Q. Are your initials on that CD?

17 A. Yes, this is my initials.

18 MS. CHANNAPATI: Your Honor, at this time I
19 would ask what's been previously marked as People's No. 8
20 for identification be received into evidence as People's 8.

21 THE COURT: Counsel.

22 MR. GREENBERG: I don't know what it is, your
23 Honor. I know what it is, but it hasn't been explained to
24 the jury.

25 THE COURT: People, I don't think you have

1 laid the foundation.

2 Q. Did you listen to that CD -- withdrawn.

3 When was the last time you listened to that?

4 A. Today.

5 Q. Was it this morning?

6 A. Yes.

7 Q. When you listened to it, what was it?

8 A. My voice when I was calling to 911.

9 MS. CHANNAPATI: Your Honor, at this time the
10 People would ask that what's been marked as People's No. 8
11 for identification be moved into evidence.

12 THE COURT: Counsel.

13 MR. GREENBERG: No objection.

14 THE COURT: No objection.

15 Into evidence as People's 8, was it?

16 MS. CHANNAPATI: Yes, your Honor.

17 THE COURT: Into evidence as People's 8.

18 MS. CHANNAPATI: I would ask at this time if
19 the CD could be played.

20 THE COURT: Any objection, Counsel?

21 MR. GREENBERG: No.

22 THE COURT: Now, the People have brought their
23 electronic equipment, and we'll put the CD in there, and
24 let's see what happens.
25